

Message Text

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64

ORIGIN L-03

INFO OCT-01 ARA-06 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00

SP-02 AID-05 EB-07 NSC-05 CIEP-01 TRSE-00 SS-15

STR-04 OMB-01 CEA-01 CIAE-00 INR-07 NSAE-00 COME-00

OPIC-03 INT-05 FRB-03 IGA-02 /071 R

DRAFTED BY L:M.FELDMAN:MEM

APPROVED BY L:M. LEIGH

ARA:J.GRU ALD

T:T.CROCKER

L/ARA:F.WILLIS

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FM SECSTATE WASHDC

TO AMEMBASSY LIMA NIACT IMMEDIATE

C O N F I D E N T I A L STATE 233194

FOR SECRETARY MAW FROM MR. LEIGH AND MR. GRUNWALD

E.O. 11652: GDS

AGS: EIND, EINV, EMIN, PFOR, PE

SUBJECT: MARCONA DRAFT

REF: LIMA 8512

WE WOULD LIKE YOU TO CONSIDER THE FOLLOWING COMMENTS ON
DRAFT TEXT OF AN INTERGOVERNMENTAL AGREEMENT REFTEL.

A. BELIEVE ENGLISH TEXT COULD BE IMPROVED OPTICALLY IF
IN ARTICLE 1 "DIFFERENCES" AND "EXTENDED" COULD BE
SUBSTITUTED FOR "DISCREPANCIES" AND "INTERPOSED"
RESPECTIVELY.

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B. WE ARE GREATLY CONCERNED AT THE EXPLICIT STATEMENT

IN ARTICLE 1 THAT PERU'S COMMITMENT TO MAKE CASH PAYMENT IS CONTINGENT UPON FINANCING BY U.S.BANKS. SUCH A STATEMENT IS OBJECTIONABLE AND WOULD ESTABLISH A BAD PRECEDENT FOR FUTURE CASES BOTH BECAUSE OF THE CONTINGENT CHARACTER OF THE GOP'S COMMITMENT AND BECAUSE OF THE SPECIFIC LINKAGE BETWEEN PAYMENT OF JUST COMPENSATION DUE UNDER INTERNATIONAL LAW AND NEW FINANCING FROM THE COUNTRY OF NATIONALITY OF THE INVESTOR. MOREOVER, IT IS NOT APPROPRIATE TO MAKE INTER-GOVERNMENTAL UNDERTAKINGS

CONTINGENT UPON ACTIONS OF PRIVATE BANKS OVER WHICH USG HAS NO CONTROL. WE HOPE YOU WILL BE ABLE TO MAKE AN AGREEMENT WITHOUT THIS STATEMENT. WE RECOGNIZE DESIRE OF GOP TO TIE DOWN BANK FINANCING WITH A CERTAINTY,BUT IT WAS OUR UNDERSTANDING BANKS WERE PREPARED TO PROVIDE FINANCING CONTINGENT ONLY UPON SETTLEMENT OF MARCONA DISPUTE, WHICH AGREEMENT PROVIDES. IF THIS IS NOT ACCURATE, IS BANK FINANCING DEPENDENT ON OTHER FACTORS? OR IS PERU INTENT ON THIS LANGUAGE FOR POLITICAL REASONS?

ROBINSON

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04 MAY 2006

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